IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/12/2002

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THE HONOURABLE MR.JUSTICE N.V.BALASUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

W.P.No.3017 of 2001 and W.P.No.3018 of 2001 and W.P.No.3019 of 2001
and
W.P.M.P.Nos.4145,4147 & 4149 of 2001

M/s. The Tamil Nadu Co-operative
Milk Producers' Federation Ltd.,
'AAVIN ILLAM', Madhavaram Milk Colony,
Chennai 600 051. ... Petitioner in all Wps.

-Vs-

1. The State of Tamil Nadu
rep. by the Deputy Commissioner (CT),
Chennai (South) Division, PAPJM Building,
Greams Road, Chennai -600 006.

2. The Tamil Nadu Taxation Special Tribunal,
Chennai, rep. by its Registrar, Singaravelar
Maligai, Rajaji Salai, Chennai 600 001. ... Respondents in all Wps.

Writ petitions are filed for the issue of a writ of
Certiorarified Mandamus as stated therein.

For petitioner :: Mr.K.J.Chandran for
M/s.Chandran Karuppiah Ramani

For respondents :: Mr.T.Ayyaswami, Spl. GP (Taxes)

:ORDER

N.V.BALASUBRAMANIAN,J.

The petitioner is a Government of Tamil Nadu Undertaking
engaged in the business of vending milk and selling milk products. The
petitioner has a registered trade mark known as, 'AAVIN' registered under the
Trade and Merchandise Marks Act,1958 (hereinafter referred to as 'the Trade
Marks Act'). It is the case of the petitioner that during the course of its
business during the assessment years 1983-84, 1984-85 and 1985-86, the
petitioner marketed its pr oducts both under the registered trade mark and
without inscription of the registered trade mark on the packages. There is no

dispute that the petitioner sold some of its products during the assessment years 1983-84 to 1985-86 without inscription of the registered trade mark on the packages. The Commercial Tax Officer levied tax on the sale of products without inscription of the registered trade mark at 10% relying upon the Entry No.103 of the I Schedule to the Tamil Nadu General Sales Tax Act, 195 9 (hereinafter referred to as 'the TNGST Act'). The said Entry as it stood then provided that when the goods were sold under any Brand name registered under the Trade Marks Act, it was taxable at 10%, and if not, it was taxable at 5%.

2. The claim of the petitioner was that the goods were sold without the brand name registered under the Trade Marks Act and hence, they were liable to sales tax at 5%. The Entry 103 was amended with effect from 1.1.1987. The assessing authority, however, rejected submission of the petitioner and levied sales tax at the rate of 10% without making any distinction between the goods sold with the trade mark and the goods sold without the inscription of trade mark, 'AAVIN'. The Appellate Assistant Commissioner, the Sales Tax Appellate Tribunal and the Tamil Nadu Taxation Special Tribunal confirmed the order of the Commercial Tax Officer holding that the goods sold by the petitioner without the brand name registered under the Trade Marks Act were leviable to sales-tax at the rate of 10%. It is the order of the Special Tribunal that is the subject matter of the present writ petitions.

3. We heard Mr.K.J.Chandran, learned counsel for the petitioner and learned Special Government Pleader (Taxes). There is no dispute that the petitioner sold most of its milk products with brand name and some of its products without the brand name and the question is whether the sale of the goods without the brand name inscribed on the packages would attract sales tax at the rate of 10% under the Entry 103 of I Schedule to the TNGST Act as it stood then. All the authorities have relied upon section 76(1) of the Trade Marks Act to hold that the trade mark was applicable not only when the mark was available on the package with which the goods were sold, but it has relevance to the places, encloses or annexes, in which goods were sold or exposed for sale and it has relation to the goods using a trade mark or trade description in any sign, advertisement, invoice, catalogue, business letter, business paper, price list or other commercial document, etc. The Special Tribunal was of the view that the commodity sold was identified by the consumers that it was sold by the dealer having a particular brand name. The Special Tribunal also found that the invoices produced contained the trade mark 'AAVIN'. The Special Tribunal found that the goods were sold in the premises of the petitioner or the bunk shops where 'AAVIN' products were sold and the bunks contained the trade mark 'AAVIN'. The Special Tribunal found that the price list and the invoices contained the trade mark 'AAVIN'. The Special Tribunal therefore held that the milk products sold by the petitioner fell under the Entry 103 of the I Schedule to the TNGST Act attracting the tax at the rate of 10%.

4. We find that the conclusion of the Special Tribunal that the goods sold by the petitioner without brand name should be deemed to be the goods sold under the trade mark was arrived at on the basis of section 76 of the Trade Marks Act which is misconceived. Section 76 occurs in Chapter X of the Trade Marks Act which deals with the offences, penalties and procedure and section 76 deals with the cases of infringement of a trade mark by a third party by placing, enclosing or annexing any goods for sale or for the purpose

of any trade or manufacture in or with any package or other thing to which a trade mark or mark or trade description has been applied. Section 76 of the Trade Marks Act is not intended to apply to any infringement by the registered proprietor of a trade mark as there is nothing in sections 7 8 and 79 of the Trade Marks Act to show that a registered proprietor of the trade mark will be convicted for the offence of infringement of his own trade mark. Apart from placing reliance on section 76 of the Trade Marks Act, nothing was brought to the attention of this Court to the effect that if the proprietor of a trade mark sells the goods without the brand name or trade mark in the same place where goods with brand name are sold, it would be deemed that he sold the goods with the brand name. We hold that the mere fact that the petitioner has sold the goods without brand name in the same bunk or same premises where other goods with brand name were sold, it cannot be held that the petitioner has infringed his own trade mark. The mere fact that the goods were sold in the same place where other goods with brand name were sold or the the invoices bore the name of the petitioner or the trade mark of the petitioner are not material to attract the Entry 103 of the I Schedule to the TNGST Act as the said Entry is intended to cover the goods which are sold under any brand name and it does not apply to the sale of goods without brand name in the same place in which other goods with the brand name were sold.

5. The amendment made to the Entry 103 with effect from 1.1.1987 also makes it clear that prior to the amendment what was relevant is to see whether the goods were sold under any brand name and it is not concerned with the person who manufactured or supplied or sold the goods and the question whether the said person was having a registered trade mark or not. The decision of this Court in RAJAM AND COMPANY v. STATE OF TAMIL NADU (91 STC 222) supports the case of the petitioner wherein this Court held that unless the goods were sold under the brand name registered under the Trade Marks Act, they do not fall under the Entry 103 of the I Schedule to the TNGST Act attracting tax at the rate of 10%. We therefore hold that all the authorities were incorrect in holding that the sale of milk products by the petitioner without the brand name would fall within the Entry 103 of the I Schedule to the TNGST Act as it stood then. The result is that the petitioner is liable to pay sales tax for the sale of goods without the brand name during the relevant assessment years in question at the rate of 5%.

6. Before parting with the case, it is surprise to find that there is no machinery provided by the Government of Tamil Nadu to resolve the disputes that may arise between the Government of Tamil Nadu and the State Government Undertakings in the matter of levy of sales tax. The question whether sale would attract 5% or 10% of tax on the sale of the products without brand name might be material for other non-governmental organisations and in so far as the State Government Undertakings are concerned, even if the levy is upheld at the higher percentage, the result would be that there will be a transfer of money by book entries. We are of the view that in the case of disputes arising between the State Government and its Undertakings, at least in the matter relating to levy of sales tax or other indirect taxes, there should be a separate machinery to resolve the disputes that may arise between the State and its own undertakings so that not only the burden on the Court is lessened, but also considerable litigation expenses and the time and energy of the officers concerned could be utilised otherwise in their regular work. We find that so far as the Central Government is concerned, the Supreme

Court has directed that it would be a condition precedent to obtain a certificate from the High Power Committee before commencing a litigation by the Central Government Undertakings against the Central Government. Considering the fact that the petitioner had to approach three different authorities and ultimately this Court has to resolve the dispute, we are of the view that it will be worthwhile for the State Government to consider to set up an independent machinery to resolve the disputes that may arise between the State Government and its own Undertakings.

7. Consequently, the impugned orders are quashed holding that the sale of the food products of the petitioner without brand name did not attract the Entry 103 of the I Schedule to the TNGST Act during the assessment years in question. The writ petitions stand allowed. In the circumstances there will be no order as to costs. Connected W.P.M.Ps. are closed.

Index: Yes
Website: Yes
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To
1. The Deputy Commercial (CT) to
to the Government of Tamil Nadu,
Chennai (South) Division,
PAPJM Building, Greams Road, Chennai-6
(with records)

2. The Registrar,
Tamil Nadu Taxation Special Tribunal,
Singaravelar Maligai,
Rajaji Salai, Chennai 600 001.
(with records).